

STATE OF NORTH DAKOTA
BOARD OF ANIMAL HEALTH

IN THE MATTER OF:)	RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
)	
Peter Lies)	
)	
Respondent.)	

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On November 6, 2002, Solicitor General Douglas A. Bahr, counsel for the Board, filed an Administrative Complaint with North Dakota Board of Animal Health requesting administrative action against Peter Lies, the owner and operator of a farmed elk operation at New Rockford, North Dakota. The complaint cites as grounds for administrative action violations of N.D. Admin. Code §§ 48-14-01-06, 48-14-01-04, and 48-14-03-01, specifically, failing and refusing to submit a complete farmed elk inventory report as required by law, failing or refusing to individually identify all his farmed elk as required by law, and failing to submit to an approved laboratory for chronic wasting disease testing appropriate brain tissue of dead elk from his operation as required by law. Lies filed a letter answer on November 25, 2002.

On December 5, 2002, the Board requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the Administrative Complaint. On December 6, 2002, the undersigned ALJ was designated.

On December 23, 2002, the ALJ issued a Notice of Hearing. The hearing was held as scheduled on January 16, 2003, in the Office of Administrative Hearings, Bismarck, North Dakota. Mr. Bahr represented the Board at the hearing. He called two witnesses to testify,

Drs. Larry Schuler and Susan Keller, the State Veterinarian and the Assistant State Veterinarian. The Respondent, Peter Lies, was present at the hearing. Lies represented himself at the hearing. However, at the beginning of the hearing, Lies did ask for the appointment of counsel to represent him. His request was denied. Lies also asked for a continuance of the hearing. That request was also denied. Lies did testify in his own behalf at the hearing and asked questions of the two witnesses called by the State. 19 exhibits were offered by the State (exhibits 1-19, blue exhibit stickers), all of which were admitted, except exhibit 6, which was not offered or withdrawn. Lies offered 4 exhibits, all of which were admitted (exhibits A-D, blue exhibit stickers). Exhibit D was admitted over objection. An exhibit list is attached.

At the close of the hearing the ALJ heard oral argument from Mr. Bahr and Mr. Lies. On January 20, 2003, Mr. Lies called the ALJ and asked for leave to present further evidence. The ALJ requested that Lies put his request in writing and copy Mr. Bahr, stating specifically what further evidence he wished to present and why it wasn't presented at the January 16 hearing. However, by January 27, 2003, Lies had not submitted a written request.

Based on the evidence presented at the hearing and the oral argument of the parties, the administrative law judge makes the following recommended findings of fact and conclusions of law.

FINDINGS OF FACT

1. At all times relevant to the allegations of the Administrative Complaint, Peter Lies has been the owner and operator of a farmed elk operation near New Rockford, North Dakota.

2. N.D.C.C. ch. 36-25 is the statutory compilation of laws regarding the regulation of farmed elk operations in North Dakota. N.D.C.C. § 36-25-02 authorizes the Board to adopt

administrative rules relating to the raising of farmed elk, including matters concerning the health, safety, confinement, and identification of farmed elk. The Board adopted such rules that became effective April 1, 2001. *See* N.D. Admin. Code Article 48-14.

3. The passage of N.D.C.C. ch. 36-25 in 1999 and the adoption of administrative rules pursuant to ch. 36-25, effective on April 1, 2001, affect the terms of any agreements entered into between the State and other parties prior to April 1, 2001. *See* Exhibit A, letter of January 28, 2000, outlining the agreement between the Board and Peter Lies regarding his game farm. *See* also exhibit B.

4. The actions of the Board (or lack thereof) with regard to any regulation of deer and elk populations on the Sully Hill National Game Preserve, a federal game preserve, under the provisions of N.D.C.C. ch. 36-25 and N.D. Admin. Code art. 48-14, are not relevant to the regulation of other farmed elk operations in North Dakota under the provisions of N.D.C.C. ch. 36-25 and N.D. Admin. Code art. 48-14. *See* exhibit C.

5. As the operator of a game farm in North Dakota and as a farmed elk operator in North Dakota, Lies was notified many times about the requirements of the law, generally, and, specifically, with regard to the requirements of the law the violation of which resulted in the allegations of this Administrative Complaint against him. *See* exhibits 2-10, except 6.

6. N.D. Admin. Code § 48-14-01-06 requires an owner of farmed elk to submit an annual farmed elk inventory report by January 1 of each year. N.D. Admin. Code § 48-14-01-06(1). The inventory information must be filled out completely and accurately on forms provided by the Board. N.D. Admin. Code § 48-14-01-06(2). An owner who fails to submit the report to the Board by March 1 of each year is in violation of N.D. Admin. Code § 48-14-01-06. N.D. Admin. Code § 48-14-01-06(1). An owner must report all purchases, sales, or other animal

transfers, escapes, recaptures, births, deaths, or diseased farmed elk on the inventory report form. N.D. Admin. Code § 48-14-01-06(3).

7. The evidence shows, by the greater weight of the evidence, that Lies failed to submit a complete farmed elk inventory report by March 1, 2002. *See* exhibits 11-18. Lies does not agree with the requirements of the law and essentially admitted at the hearing that he did not comply with the requirements of the law as contained in N.D. Admin. Code § 48-14-01-06. Lies never did file a complete farmed elk inventory report during the year 2002 as required by law.

8. The evidence shows, by the greater weight of the evidence, that Lies failed to individually identify all of the elk in his farmed elk operation according to the identification methods prescribed by the Board, in violation of N.D. Admin. Code § 48-14-01-04. *See* exhibit 2. Again, Lies does not agree with the requirements of the law and essentially admitted at the hearing that he did not comply with the requirements of the law as contained in N.D. Admin. Code § 48-14-01-04. Lies believes that because of his previous agreement with the Board (*see* exhibits A and B) and because the federal government does not tag Sully Hill National Game Preserve elk, he does not have to individually identify all of his farmed elk.

9. The evidence shows, by the greater weight of the evidence, and Lies admits, that on June 27, 2002, he shot over 20 of his farmed elk, buried them on the premises of his farmed elk operation, and did not submit appropriate brain tissue from any of the dead farmed elk, 12 months of age or older at the time of death, to an approved laboratory for chronic wasting disease testing, in violation of N.D. Admin. Code § 48-14-03-01.

10. Lies called the State Veterinarian's office on June 27 and told an office employee that he was going to shoot his farmed elk and that if the State Veterinarian wanted tests of any of the brain tissue they could come and get the tissue. In September, the State Veterinarian and

Assistant State Veterinarian inspected Lies premises and were told and shown by Lies where the shot farmed Elk were buried on the Lies premises.

11. Lies has been trained in the proper methods for collecting Chronic wasting disease samples.

CONCLUSIONS OF LAW

1. At all times relevant to the Administrative Complaint in this matter, Lies has been the owner and operator of a farmed elk operation near New Rockford, North Dakota. As such, he is subject to the provisions of N.D.C.C. ch. 36-25 and N.D. Admin. Code art. 48-14.

2. The evidence shows, by the greater weight of the evidence, and Lies essentially admits, that he violated the provisions of N.D. Admin. Code § 48-14-01-06 as alleged in the Administrative Complaint. He failed to submit a complete farmed elk inventory report by March 1, 2002, and never did file a complete farmed inventory report during 2002.

3 The evidence shows, by the greater weight of the evidence, and Lies essentially admits, that he violated the provisions of N.D. Admin. Code § 48-14-01-04 as alleged in the Administrative Complaint. He failed to individually identify all of the elk from his farmed elk operation as required by law.

4. The evidence shows, by the greater weight of the evidence, and Lies clearly admits, that he violated N.D. Admin. Code § 48-14-03-01, in that he did not submit the appropriate brain tissue of many dead farm elk, 12 months of age or older at the time of death, to an approved laboratory for chronic wasting disease testing.

5. N.D.C.C. § 36-25-10 authorizes the Board to assess a civil penalty of up to five thousand dollars per violation for any person who has brought elk into this state, kept elk, or received elk in violation of the Boards rules. The evidence shows that Lies kept elk on his

farmed elk operation in North Dakota in violation of the rules of the Board. In fact, the evidence shows three violations of the rules by Lies. The Board, therefore, may assess him a civil penalty for those three violations of up to fifteen thousand dollars.

COMMENTARY

Although intentional violation of the laws is not a requirement for assessing a civil penalty in this matter, the evidence shows that Lies intentionally violated the law, even though the State Veterinarian and Assistant State Veterinarian attempted to help him with compliance. Lies clearly does not like the law regulating farmed elk operations in North Dakota, and disagrees with the need for the law. He also does not like the fact that the federal government may be treated differently under the law, but that is irrelevant as to how other farmed elk operators in North Dakota should be and are treated under the law.

At the hearing, counsel for the Board recommended that the maximum penalty allowed by law be imposed on Lies for the three violations proven at the hearing. Counsel also said that if Lies acknowledges the requirements of the law and agrees with the Board to comply with the law in the future, perhaps Lies and the Board could agree on a lesser penalty.

The ALJ, too, is concerned that Lies acknowledge the error of his ways, show some remorse for what he has done, and agree with the Board, in the Board's presence, that he will faithfully comply with the laws regarding farmed elk in the future. If he cannot do this, certainly the maximum penalty is warranted.

Of further concern is Lies emotional response to regulation. Concern or worry about his situation with regard to the law appears to have adversely affected Lies' mental well being, as evidenced by certain statements he made at the hearing. Lies needs to accept the need for and inevitability of farmed elk regulation, as well as regulation of other non-traditional livestock, and

come to personal terms with it. Perhaps he needs some counseling in this regard if he is going to continue to operate his game farm.

The ALJ encourages Lies to come to the Board's meeting where the Board will discuss this matter. If he can, he should be prepared to seek agreement for future compliance satisfactory to the Board. Perhaps, then, the Board may be lenient with him.

RECOMMENDED ORDER

The greater weight of the evidence shows that Peter Lies violated the provisions of N.D. Admin. Code §§ 48-14-01-04, 48-14-01-06, and 48-14-03-01 as alleged in the Board's Administrative Complaint. Because of these violations proven at the hearing, the ALJ recommends that the Board order imposition of a \$15,000 civil penalty against Lies.

Dated at Bismarck, North Dakota, this 28th day of January, 2003.

State of North Dakota
Board of Animal Health

By: _____
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